

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments change the payment methodology for the following Medicaid home- and community-based services (HCBS) waivers to align with the payment methodology for durable medical equipment under the Medicaid state plan:

- Assistive devices under the elderly waiver (Item 3).
- Environmental modifications and adaptive devices under the children’s mental health waiver (Item 9).
- Home and vehicle modifications under the ill and handicapped, elderly, intellectual disability, brain injury and physical disability waivers (Items 1, 2, 4, 5, and 7).
- Specialized medical equipment under the brain injury and physical disability waivers (Items 6 and 8).

Aligning the reimbursement for durable equipment is one of the Medicaid cost containment strategies recommended by Governor Branstad. 2011 Iowa Acts, House File 649, authorizes the Department to implement these recommendations.

The Council on Human Services adopted these amendments on August 10, 2011.

The Department finds that notice and public participation are impracticable because the Department’s appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments are also published herein under Notice of Intended Action as **ARC 9705B** to allow for public comment.

These amendments do not provide for waivers in specified situations because the savings assumed in the Department’s appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments became effective September 1, 2011.

The following amendments are adopted.

ITEM 1. Amend paragraphs **78.34(9)“e”** and **“f”** as follows:

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the ~~enrolled home and vehicle modification~~ provider and the member. ~~Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.~~

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers’ compensation coverage and the applicable permit and license.

ITEM 2. Amend paragraphs **78.37(9)“e”** and **“f”** as follows:

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the enrolled home and vehicle modification provider and the member. ~~Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.~~

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

ITEM 3. Amend subrule 78.37(13) as follows:

**78.37(13) Assistive devices.** Assistive devices means practical equipment products to assist persons with activities of daily living and instrumental activities of daily living to allow the person more independence. They include, but are not limited to: long-reach brush, extra long shoehorn, nonslip grippers to pick up and reach items, dressing aids, shampoo rinse tray and inflatable shampoo tray, double-handled cup and sipper lid. A unit is an item.

*a.* The service shall be included in the member's service plan and shall exceed the services available under the Medicaid state plan.

*b.* The service shall be provided following prior approval by the Iowa Medicaid enterprise.

*c.* Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

ITEM 4. Amend paragraphs **78.41(4)“e”** and **“f”** as follows:

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the enrolled home and vehicle modification provider and the member. ~~Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.~~

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

ITEM 5. Amend paragraphs **78.43(5)“e”** and **“f”** as follows:

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the enrolled home and vehicle modification provider and the member. ~~Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.~~

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

ITEM 6. Adopt the following **new** paragraph **78.43(8)“e”**:

*e.* Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

ITEM 7. Amend paragraphs **78.46(2)“e”** and **“f”** as follows:

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the enrolled home and vehicle modification provider and the member. ~~Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.~~

f. All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

ITEM 8. Adopt the following new paragraph **78.46(4)“e”**:

e. Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

ITEM 9. Adopt the following new paragraph **78.52(2)“d”**:

d. Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

ITEM 10. Amend subrule **79.1(2)**, “HCBS waiver service providers,” numbered paragraphs “9,” “13,” “20” and “27,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
9. Home and vehicle modification	Fee schedule. <u>See 79.1(17)</u>	For elderly waiver: \$1,010 lifetime maximum.  For intellectual disability waiver: \$5,050 lifetime maximum.  For brain injury, ill and handicapped and physical disability waivers: \$6,060 per year.
13. Assistive devices	Fee schedule. <u>See 79.1(17)</u>	Effective 7/1/11: <del>\$107.30</del> <u>\$110.05</u> per unit.
20. Specialized medical equipment	Fee schedule. <u>See 79.1(17)</u>	\$6,060 per year.
27. Environmental modifications and adaptive devices	Fee schedule. <u>See 79.1(17)</u>	\$6,060 per year.

ITEM 11. Amend subrule 79.1(17) as follows:

**79.1(17) Reimbursement for home- and community-based services home and vehicle modification and equipment.** Payment is made for home and vehicle modifications, assistive devices, specialized medical equipment, and environmental modifications and adaptive devices at the amount of payment to the subcontractor provided in the contract between the supported community living authorized by the department through a quotation, contract, or invoice submitted by the provider and subcontractor. All contracts shall be awarded through competitive bidding, shall be approved by the department, and shall be justified by the consumer's service plan. Payment for completed work shall be made to the supported community living provider.

a. The case manager shall submit the service plan and the contract, invoice or quotations from the providers to the Iowa Medicaid enterprise for prior approval before the modification is initiated or the equipment is purchased. Payment shall not be approved for duplicate items.

b. Whenever possible, three itemized bids for the modification or quotations for equipment purchase shall be presented for review. The amount payable shall be based on the least expensive item that meets the member's medical needs.

c. Payment for most items shall be based on a fee schedule and shall conform to the limitations set forth in subrule 79.1(12).

(1) For services and items that are furnished under Part B of Medicare, the fee shall be the lowest charge allowed under Medicare.

(2) For services and items that are furnished only under Medicaid, the fee shall be the lowest charge determined by the department according to the Medicare reimbursement method described in Section 1834(a) of the Social Security Act (42 U.S.C. 1395m), Payment for Durable Medical Equipment.

(3) Payment for supplies with no established Medicare fee shall be at the average wholesale price for the item less 10 percent.

(4) Payment for items with no Medicare fee, Medicaid fee, or average wholesale price shall be made at the manufacturer's suggested retail price less 15 percent.

(5) Payment for items with no Medicare fee, Medicaid fee, average wholesale price, or manufacturer's suggested retail price shall be made at the dealer's cost plus 10 percent. The actual invoice for the item from the manufacturer must be submitted with the claim. Catalog pages or printouts supplied by the provider are not considered invoices.

(6) For selected medical services, supplies, and equipment, including equipment servicing, that generally do not vary significantly in quality from one provider to another, the payment shall be the lowest price for which such devices are widely and consistently available in a locality.

(7) Payment for used equipment shall not exceed 80 percent of the purchase allowance.

(8) No allowance shall be made for delivery, freight, postage, or other provider operating expenses for durable medical equipment, prosthetic devices, or sickroom supplies.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.